

REMARKS

Claims 1 and 5-21 were examined in Final Office Action of September 22, 2005, and rejected as obvious over *Bagshawe* (U.S. Patent No. 4,734,262) in view of EP 0353025. The rejection is respectfully traversed and reconsideration of the rejection is requested in view of the following remarks.

A. *Prima Facie* Obviousness of Claims 1, 2 and 5-21 is not Established by the Combination of *Bagshawe* in view of EP0353025.

The invention of claim 1 includes an inlet port slidably disposed beneath a sample receiving chamber (having a first inlet) and over a first optical chamber, which may then be slid to a position beneath a second inlet from "at least one other chamber adapted to contain an eluting medium". The apparatus also includes a second optical chamber. With this apparatus, the inlet port is movable relative to the first and second inlets and is brought into liquid communication with each inlet in turn.

The Office Action relies on *Bagshawe* as teaching an optical chamber, a filter and a sample receiving chamber, with the filter positioned between the sample receiving chamber and an optical chamber, and observes that *Bagshawe* is silent as to two optical chambers, contact of the sample, and preloaded reagents upon proper alignment of the device. The Office Action relies on EP0353025 as teaching an additional optical chamber for use with a control and also teaches reaction initiation when an upper housing moves relative to a lower housing.

This combination fails to establish *prima facie* obviousness because:

- Claim 1 does not claim "preloaded reagents upon proper alignment of the device, but rather claims "at least one other chamber adapted to contain an eluting medium", which neither *Bagshawe* nor EP0353025 teach; and
- There is no motivation to combine *Bagshawe*'s optical chamber with EP0353025's slidable configuration. The inlet seal of *Bagshawe* prevents the viewing of any color change of the liquid in the lower chamber from the top, while the slidable configuration of EP0353025 solves this problem by allowing sample viewing of the reacted sample on the filter by viewing the inlet filter from the top.

In accordance with M.P.E.P. § 2143, "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, the . . . references when combined . . . must teach or suggest all the claim limitations.

Here, the combined references do not each all the claim limitations. Neither *Bagshawe* nor EP0353025 teaches the claimed "at least one other chamber adapted to contain an eluting medium." For this reason alone, *prima facie* obviousness has not been established.

Also, there is no suggestion or motivation to combine the references. EP0353025 teaches away from the combination in its criticism of *Bagshawe* at col. 1, lines 52-55 and col. 3, lines 37-41. EP0353025 teaches its "results are easily read from a color change on the filter" and that the "labeled antibodies so trapped on the filter are then caused to react to produce a detectable signal." These changes to the filter are viewed through wells 52a, 52b, 52c positioned over the filters. (FIGS. 2, 3A and 3B). The teachings taken as a whole, suggest one would not be motivated to combine the references since the *Bagshawe* configuration utilizes a lower optical chamber to view color changes in the filtrate not viewable through a filter, while EP0353025 teaches how samples and controls are measured by reading a color change on the filter.

Since *prima facie* obviousness is not established by the combination of *Bagshawe* in view of EP0353025, withdrawal of the 35 U.S.C. § 103 rejection of claim 1 is respectfully requested. Claims 2 and 5-21, which depend directly or indirectly from claim 1, are likewise allowable. The Examiner is asked to phone the undersigned should any issues remain.

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Respectfully submitted,



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